



December 12, 2000

Ms. Ann Dillon  
General Counsel  
General Services Commission  
1711 San Jacinto  
P O Box 13047  
Austin, Texas 78711-3047

OR2000-4677

Dear Ms. Dillon:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 142098.

The General Services Commission (the "commission") received a request for "any and all open records requests which have been made with regard to The Collaborative Group, LLC." You inform us that the Historically Underutilized Business Program has received one such request, from the State Auditor's Office (the "SAO"). You assert that the requested information may be excepted from disclosure under sections 552.111 and 552.116 of the Government Code, but make no arguments in support of these assertions. Rather, you have deferred to the SAO, who you notified of the request. The SAO submitted an argument to this office claiming that the requested information is excepted from disclosure under section 552.116 of the Government Code as an audit working paper. We have considered the exception claimed by the SAO and reviewed the submitted information.

Section 552.116 of the Government Code provides in relevant part:

- (a) An audit working paper of an audit of the state auditor or the auditor of a state agency or institution of higher education as defined by Section 61.003, Education Code, is excepted from [required public disclosure]. If information in an audit working paper is also maintained in

another record, that other record is not excepted from [required public disclosure] by this section.

(b) In this section:

(1) "Audit" means an audit authorized or required by a statute of this state or the United States and includes an investigation.

(2) "Audit working paper" includes all information, documentary or otherwise, prepared or maintained in conducting an audit or preparing an audit report, including:

(A) intra-agency and interagency communications; and

(B) drafts of the audit report or portions of those drafts.

Gov't Code § 552.116. The SAO asserts that the submitted document constitutes a communication between the SAO and the commission "relating to a follow-up audit on controls over investment practices at major state investing entities." The SAO states that this audit is authorized by section 321.013 of the Government Code, which grants the State Auditor the authority to conduct audits of all departments, as specified in the audit plan. The SAO also submitted to this office the relevant section of the State Auditor's Fiscal Year 1999 Work Plan, approved by the Legislative Audit Committee, providing for "[f]ollow-up Review of Controls Over Investment Practices (Phases I & II)" in multiple agencies.

After reviewing the submitted information and the arguments of the SAO, we agree that the submitted information constitutes an "audit working paper" under section 552.116. Therefore, the commission may withhold the submitted information under section 552.116 of the Government Code. As we resolve your request under section 552.116, we need not address the applicability of section 552.111 to the requested information.

This letter ruling is limited to the particular records at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other records or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For example, governmental bodies are prohibited from asking the attorney general to reconsider this ruling. Gov't Code § 552.301(f). If the governmental body wants to challenge this ruling, the governmental body must appeal by filing suit in Travis County within 30 calendar days. *Id.* § 552.324(b). In order to get the full benefit of such an appeal, the governmental body must file suit within 10 calendar days.

*Id.* § 552.353(b)(3), (c). If the governmental body does not appeal this ruling and the governmental body does not comply with it, then both the requestor and the attorney general have the right to file suit against the governmental body to enforce this ruling. *Id.* § 552.321(a).

If this ruling requires the governmental body to release all or part of the requested information, the governmental body is responsible for taking the next step. Based on the statute, the attorney general expects that, within 10 calendar days of this ruling, the governmental body will do one of the following three things: 1) release the public records; 2) notify the requestor of the exact day, time, and place that copies of the records will be provided or that the records can be inspected; or 3) notify the requestor of the governmental body's intent to challenge this letter ruling in court. If the governmental body fails to do one of these three things within 10 calendar days of this ruling, then the requestor should report that failure to the attorney general's Open Government Hotline, toll free, at 877/673-6839. The requestor may also file a complaint with the district or county attorney. *Id.* § 552.3215(e).

If this ruling requires or permits the governmental body to withhold all or some of the requested information, the requestor can appeal that decision by suing the governmental body. *Id.* § 552.321(a); *Texas Department of Public Safety v. Gilbreath*, 842 S.W.2d 408, 411 (Tex. App.--Austin 1992, no writ).

Please remember that under the Act the release of information triggers certain procedures for costs and charges to the requestor. If records are released in compliance with this ruling, be sure that all charges for the information are at or below the legal amounts. Questions or complaints about over-charging must be directed to Hadassah Schloss at the General Services Commission at 512/475-2497.

If the governmental body, the requestor, or any other person has questions or comments about this ruling, they may contact our office. Although there is no statutory deadline for contacting us, the attorney general prefers to receive any comments within 10 calendar days of the date of this ruling.

Sincerely,



Michael A. Pearle  
Assistant Attorney General  
Open Records Division

MAP/seg

Ref: ID# 142098

Encl. Submitted documents

cc: Mr. Brian Borowski  
9308 Creek's Edge Circle  
Austin, Texas 78773  
(w/o enclosures)